

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

DSF
C/m

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ANTHONY COSTA,

Movant,

MEMORANDUM AND ORDER

Case No. 07-CV-3503 (FB)

-against-

UNITED STATES OF AMERICA,

Respondent.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 24 2009 ★

BROOKLYN OFFICE

Appearances:

For the Petitioner:

CHRISTOPHER JOSEPH CASSAR, ESQ.
Christopher J. Cassar P.C.
13 East Carver Street
Huntington, NY 11743

For the Respondent:

BENTON J. CAMPBELL, ESQ.
United States Attorney
Eastern District of New York
By: Stephen James Meyer, Esq.
Assistant United States Attorney
271 Cadman Plaza East
Brooklyn, NY 11201

BLOCK, Senior District Judge:

Anthony Costa ("Costa"), moves to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, arguing, *inter alia*, that he was denied effective assistance of counsel because his counsel Charles F. Carnesi ("Carnesi") failed to file a notice of appeal.

Costa has attested:

that Mr. Carnesi had refused to answer telephone calls immediately after [Costa was] sentenced to get Mr. Carnesi to file a notice of appeal, and not only did Mr. Carnesi refuse to answer [Costa's] phone calls, but also refused to answer calls from [Costa's] wife and family as well.

Costa Aff. at 16. Carnesi has submitted an affidavit, stating, "At no time did Mr. Costa ever request that a notice of Appeal be filed on his behalf." Carnesi Aff. at 8. Because Carnesi

does not directly address or refute Costa's allegations, the Court will hold an evidentiary hearing to determine whether Costa attempted to request that Carnesi file an appeal, and whether Carnesi was aware, or should have been aware, of those efforts. *See Campusano v. United States*, 442 F.3d 770 (2d Cir. 2006) (remanding for evidentiary hearing on whether defendant in fact instructed his attorney to file an appeal and stating that such a finding warrants the reinstatement of defendant's right to a direct appeal). If the Court so finds, Costa will be allowed a direct appeal.

Accordingly, the parties shall appear before this Court on October 7, 2009, at 11:00 a.m. for a hearing pursuant to 28 U.S.C. § 2255(b). Respondent shall produce Costa for this hearing, and both parties shall produce necessary witnesses, including Carnesi. The Court is aware of the other grounds upon which Costa seeks relief under 28 U.S.C. § 2255 and his motion for leave to amend one such ground; judgment is reserved on those issues pending the evidentiary hearing.

SO ORDERED.

S/FB


FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 20, 2009